

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. PRIVASAFE, Respondent.	DOCKET NO. FCU-05-2
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND
SETTING DEADLINE FOR RESPONSE**

(Issued February 8, 2005)

On January 7, 2005, pursuant to Iowa Code §§ 476.103 and 476.3, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty for an alleged cramming violation committed by Privasafe. Based on the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

On November 23, 2004, Mr. Robin Buddi of Sioux City, Iowa, submitted a complaint to the Board disputing charges that appeared on his telephone bill. Mr. Buddi objected to charges for "Privasafe e-mail." Mr. Buddi explained he had contacted Enhanced Services Billing, Inc. (ESBI), the billing company which submitted the charges, and was told that the charges resulted after a woman named

Melinda Benoit completed an on-line form. Mr. Buddi stated that Ms. Benoit was not authorized to place charges on his telephone bill.

Board staff identified the matter as C-04-257 and, pursuant to Board rules, on November 29, 2004, forwarded the complaint to ESBI for response within ten days. ESBI stated in its response that the disputed charges were submitted on behalf of Consumer Digital Services.

On December 9, 2004, Board staff forwarded the complaint to Consumer Digital Services for response within ten days. On December 28, 2004, the Board received a response from Privasafe noting that a credit of \$29.90 was issued to Mr. Buddi's local telephone bill, the account was canceled, and that no further charges or demands for payment would be made. Privasafe stated that before a consumer signs up for its services, all terms, including costs, are fully disclosed and the customer confirms that he or she is authorized to bill charges to the telephone number. Privasafe included in its response what it called "letter of authorization" information.

On December 29, 2004, Board staff issued a proposed resolution. Staff concluded that while Privasafe may have had information it deemed necessary to bill the charges, it did not appear that Mr. Buddi authorized Ms. Benoit to place charges on his local telephone bill. Staff found that because the charges were not authorized, Privasafe had violated Board rules. Staff noted the account was canceled and fully credited.

In its January 7, 2005, petition, Consumer Advocate asserts that the proposed resolution should be augmented with a civil monetary penalty, because a credit alone

will not stop the violations. Consumer Advocate asserts that civil penalties are necessary to ensure compliance and deter future violations. Privasafe has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds there is sufficient information to warrant further investigation into this matter. The Board will delay establishing a procedural schedule and allow Privasafe an opportunity to respond to the allegations raised in Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on January 7, 2005, is granted. File C-04-257 is docketed for formal proceedings, identified as Docket No. FCU-05-2.

2. Privasafe is directed to file a response to Consumer Advocate's petition on or before March 9, 2005.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 8th day of February 2005.